INDEX

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: [redacted]

Date: SEP - 8 1998

In re: [redacted]

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Bart Klein, Esquire
605 First Avenue, Suite 500
Seattle, Washington 98104

ON BEHALF OF SERVICE: Cathy A. Auble
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - In United States in violation of law [1]

APPLICATION: Asylum; withholding of deportation; voluntary departure

The respondent, a 24-year-old native and citizen of Russia, has appealed that portion of an Immigration Judge's decision denying her applications for asylum and withholding of deportation under sections 208 and 243(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1253(h). The appeal will be dismissed.

We first observe that the Immigration Judge, although doubtful of certain aspects of her testimony (I.J. at 13), ultimately found the respondent to have testified credibly (I.J. at 15). As we do not find this to be a case in which we can independently make a finding that

---

1 Since amendments made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (enacted Sep. 30, 1996), are not currently applicable to the case before us, references herein are made to the Immigration and Nationality Act ("I&N Act") as it existed prior to IIRIRA's enactment.

[redacted]

the respondent's testimony was not truthful, we accept the respondent's testimony as true in our adjudication of this appeal. See Hartooni v. INS, 21 F.3d 336, 342 (9th Cir. 1994); see also Matter of A-S-, Interim Decision 3336 (BIA 1998); Matter of B-, Interim Decision 3251 (BIA 1995); Matter of Burbano, 20 I&N Dec. 872 (BIA 1994).

According to that testimony and her written asylum application (Form I-589), the respondent, who lived in Khabarovsk in the eastern part of Russia, was abducted and raped by members of the Chechen mafia on numerous occasions between 1992 and 1994. The first of these incidents occurred on February 16, 1992, when the respondent was abducted while waiting for a bus. Unidentified persons emerged from a Japanese-made vehicle, drugged her, and took her to a well-furnished room in an unknown location where she was beaten and raped repeatedly for a 7-day period (Tr. at 33-37). She later was released in a park near her home. Thereafter, she received telephone calls at home threatening her with harm if she should tell anyone what had occurred or if she left Khabarovsk (Tr. at 40). Fourteen days later, she again was abducted, taken to the same location, and raped by the same individual who had raped her the first time (Tr. at 37-38). The abductions continued on approximately a weekly basis through 1994 (Tr. at 41), with the exception of a short period in the Fall of 1993 when she met a United States citizen to whom she became engaged to marry (Tr. at 42) and who eventually filed a petition on her behalf to enter the United States as his fiancee. At the start of this extended period of abuse, her parents went to the police on three different occasions seeking help, until the police finally informed them that they didn't want any "extra problems"; the respondent understood their advice to mean the police feared retaliation from the Chechen mafia if they were to prosecute (Tr. at 38-39). The respondent, herself, never went to the police because her kidnappers told her it would be futile to do so (Tr. at 41). The respondent sought medical treatment for her injuries on 10 different occasions for harm resulting from these abductions and rapes (Tr. at 43). Since her departure from Russia, the respondent's parents have informed her that these same persons have been looking for her, have burned down the family's summer home, and have made threatening telephone calls (Tr. at 45-47).

The respondent provided documentary evidence to corroborate certain aspects of her claim, specifically the medical treatment received for her rapes, her abortion, and the police investigation into the cause of the fire at her parents' summer cottage. See letters from Chebarovsk County Hospital No. 2, dated September 1, 1994; Ministry of Public Health, dated September 10, 1994; Ministry of Public Health, dated September 5, 1996 (for treatment received August 12, 1994); Academy of Medical Science, undated (for treatment received February 24, 1992); "Statement" by Basova Z.G., dated October 30, 1995; and "Inquiry" by Abrosova N.V., dated November 19, 1995. The respondent contends on appeal that the Immigration Judge failed to consider this documentary evidence (Respondent's Brief, at 4, footnote 1). Inasmuch as we have considered these documents in deciding the instant appeal, we conclude that the respondent has not suffered prejudice due to any failure on the part of the Immigration Judge to consider them. Matter of Montenegro, 20 I&N Dec. 603, 604 (BIA 1992).

[redacted]

On appeal, the respondent argues that she sufficiently established her past persecution and well-founded fear of persecution on account of political opinion under Ninth Circuit authority recognizing that the type of harm she experienced (i.e., the abduction and rape of "non-political" women by forces the government is unable or unwilling to control) can constitute persecution on account of political opinion. See Lazo-Majano v. INS, 813 F.2d 1432 (9th Cir. 1987), overruled on other grounds, Fisher v. INS, 79 F.3d 955 (9th Cir. 1996). However, it is well-established that an asylum applicant must present at least "some evidence" of motive on the part of his or her persecutors, either direct or circumstantial. INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992). An asylum applicant must produce evidence or testimony from which it is reasonable to believe that the harm was motivated, at least in part, by an actual or imputed protected ground. Matter of V-T-S-, Interim Decision 3308 (BIA 1997); Matter of T-M-B-, Interim Decision 3307 (BIA 1997); Matter of S-P-, Interim Decision 3287 (BIA 1996). See also section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A); 8 C.F.R.§ 208.13 (1997).

The holding in Lazo-Majano does not alter this basic requirement that an asylum applicant must demonstrate that the harm feared in the future, or suffered in the past, be "on account of" a statutorily-protectedcharacteristic, whether that characteristic be imputed or otherwise. Indeed, the Court viewed the persecutor as having targeted the respondent on account of political opinion in that he had "manipulatively chosen to regard [the asylum applicant] as a subversive." Lazo-Majano, supra, at 1436. Subsequent decisions from the Ninth Circuit Court of Appeals likewise have required asylum applicants to demonstrate persecutorial motive on account of an enumerated ground or imputed ground. See Sangha v. INS, 103 F.3d 1482, at 1487 (9th Cir. 1997) (applicant must "prove something more than violence plus disparity of views"); Lopez-Galarza v. INS, 99 F.3d 954, at 960 (9th Cir. 1996) ("The circumstances of [the asylum applicant's] physical and mental abuse [beatings and rape] create a strong inference . . . that this abuse was premised on [the applicant's] perceived political opposition to the Sandinista regime"); Gonzalez-Neyra v. INS, 122 F.3d 1293, at 1296 (9th Cir. 1997), reh'g denied and amended, 133 F.3d 726 (9th Cir. 1998) (causal connection between harm and political opinion found where applicant "provided evidence that he was persecuted, that he had a political opinion, that he expressed it to his persecutors, and that they threatened him only after he expressed his opinion."). Moreover, authority from the judicial circuit controlling the outcome of this case likewise requires asylum applicants to provide evidence or testimony establishing persecutorial motive. See Nazaraghaie v. INS, 102 F.3d 460, at 463-64 (10th Cir. 1996) (court examines whether applicant demonstrated that periods of detention were "on account of" political opinion); Bartesaghi-Lay v. INS, 9 F.3d 819 (10th Cir. 1993) (proper for Board to deny claim on basis that non-governmental persecutor sought applicant because of refusal to participate in drug smuggling, not political opinion); Sadeghi v. INS, 40 F.3d 1139, at 1142 (10th Cir. 1994) ("the question is whether petitioner's evidence compels the conclusion that his attempted arrest and placement on the 'wanted' list were for persecution because of a statutory factor"). Established authority simply does not support the respondent's contention on appeal (Respondent's Brief at 10-11) that, by her very flight from Russia, the respondent asserted a political opinion sufficient to establish her eligibility for asylum.

[redacted]

Indeed, the record evidence and testimony do not sufficiently establish motive of any kind in this case. In determining the motive for harm, adjudicators consider the totality of the circumstances, including an analysis of various factors including, inter alia, the statements or action of the perpetrators and the treatment of others similarly situated to the applicant. Matter of S-P-, supra, at 12-13. An analysis of such factors in this case does not reveal that her "persecutors" were motivated, even partially, by a statutory ground. Respondent testified that the men who abducted her "never explained me anything, but I felt they hated me" (Tr. at 43). According to the respondent, they did not know her identity at the time of her first abduction and did not know her name until she recovered consciousness at their hideaway location (Tr. at 56). Indeed, her own explanation of the reasons for their actions also indicates the arbitrary nature of their abuse of the respondent:

> They didn't tell me why, but they just said, you were in our way, and since you were in our way, we'll take you and we'll deal with you. They can choose any person to be their victim. They not have any preference, just to be on their way at that time. They want to show people how much they control the society (Tr. at 57).

The testimony and evidence as a whole do not establish facts upon which a reasonable person would fear danger which arises on account of race, religion, nationality, membership in a particular social group, or political opinion. INS v. Elias-Zacarias, supra; Matter of V-T-S-, supra; Matter of T-M-B-, supra; Matter of S-P-, supra. For this reason, the respondent's appeal will be dismissed.

The respondent also argues on appeal that she was targeted on the basis of her membership in a particular social group, defined as "relatively young, sexually mature, sexually attractive females in Russia who are unwillingly subjected to sexual oppression by members of the male dominated Chechen Mafia" (Respondent's Brief at 14). The respondent did not make this argument before the Immigration Judge. See Respondent's Request for Asylum (Form I-589, Exh. 2), Part C, Item 21 (indicating "other" as basis for claim); Respondent's Trial Brief, dated April 3, 1996 (political basis only); and Tr. at 85 (counsel for respondent argues political opinion ground). Thus, this issue is insufficiently developed and inadequately preserved for the purpose of appellate review. However, we nevertheless note that, even if we were to accept that such characteristics define a cognizable social group under the Act, we would not find a persecutorial motive adequately established. For the reasons already provided, the respondent has not provided sufficient testimony and evidence from which one can reasonably infer that the motivation for the persecutors' abhorrent actions was her membership in that social group or any other statutorily-protected characteristic. Matter of V-T-S-, supra, at 8.

Inasmuch as the respondent has failed to satisfy the burden of proof required for asylum, it follows that she has also failed to satisfy the more burdensome standard of eligibility required

[redacted]

for withholding of deportation under section 243(h) of the Act, 8 U.S.C. § 1253(h). See Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

As the foregoing is determinative of the respondent's appeal, we need not address the other issues raised by the respondent on appeal.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director; and in the event of failure so to depart, the respondent shall be deported as provided in the Immigration Judge's order.

FOR THE BOARD